

CPS-237

May 25, 2006

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **06-1212**

ERIC WITHERSPOON, Appellant,

v.

STATE OF DELAWARE, et al.,

(D. Del. Civ. No. 04-cv-01424)

Present: BARRY, SMITH AND NYGAARD, CIRCUIT JUDGES

Submitted are:

- (1) Appellant's notice of appeal, which may be construed as a request for a certificate of appealability under 28 U.S.C. § 2253(c)(1); and
- (2) Appellant's motions (2) for appointment of counsel

in the above-captioned case.

Respectfully,

Clerk

MMW/DPW/clc

ORDER

The foregoing request for a certificate of appealability is denied. Jurists of reason could not debate that the District Court properly denied Appellant's 28 U.S.C. § 2254 habeas petition as untimely filed. See Slack v. McDaniel, 529 U.S. 473, 484 (2000). Appellant has not made a showing sufficient to warrant equitable tolling. See Pace v. DiGuglielmo, 125 S. Ct. 1807 (2005). Appellant's motions for the appointment of counsel are denied.

By the Court,

/s/ D. Brooks Smith

Circuit Judge

Dated: June 14, 2006

CLC\cc: Mr. Eric Witherspoon

Thomas E. Brown, Esq.



Marcia M. Waldron

Marcia M. Waldron, Clerk